SHRI JANARDHAN POOJARI: Madam, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE DELEGATED LEGISLATION PROVISIONS (AMENDMENT) BILL, 1985

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Madam Vice-Chairman, I beg to move:

"That the Bill to amend certain Acts to implement the recommendations of the Committees on Subordinate Legislation regarding publication and laying of rules and other delegated legislation and certain other matters, be taken into consideration."

Madam, the honourable Members are aware of the recommendations of the Committees of both Houses on Subordinate Legislation that with regard to the provision providing for delegated legislation. A number of Acts passed by Parliament in the past, which provide for making of rules, regulations and other forms of subordinate legislation, are not in consonance with those recommendations. Either they do not contain the provision for laying of such rules, regulations or other forms of subordinate legislation before the Houses of Parliament or they do not expressly provide for the publication of the same and yet some provisions are there for laying on lines which are different from the latest on the subject as approved by the Committees on Subordinate Legislation. The Committees have from time to time been deprecating the delay in implementing their recommendations and have been emphasising that the administrative Ministries concerned with the different enactments should take necessary steps for implementing the same suitably in conformity with the recommendations. In the past, when some Bills for amending individual Acts for implementing the recommendations of the Committee came up for consideration, suggestions were made by the honourable Members that it would be better to bring forward a comprehensive legislation covering various enactments which require similar amendments. A Bill to this effect covering 50 Acts, had already been passed by Parliament in 1983. Another Bill, to cover 69 more Acts, was introduced in 1984 which lapsed on the dissolution of the Seventh Lok Sabha. The Bill which is now before this House is the result of the efforts of our Ministry in this direction.

The Committee on Subordinate Legislation, Seventh Lok Sabha, had recommended that the provision which is at present contained in sub-rule (viii) of rule 39(a) of the Conduct of Election Rules, 1961, should be incorporated in the Act itself.

The sub-rule provides for cancellation of a ballot paper issued to an elector in case he refuses to adopt the procedure prescribed under that rule. The present opportunity is being availed of to include this recommendation also. The Bill, therefore, covers 92 enactments specified in the Schedule to the Bill. Some more enactments remain to be amended on similar lines. The matter has been taken up with the administrative Ministries concerned, and efforts are being made by my Ministry to cover those Acts also as expeditiously as possible in regard to the remaining enactments.

The question was proposed.

THE VICE-CHAIRMAN [DR. (SHRIMATI) SAROJINI MAHISHI]: Shri Dipen Ghosh.

SHRI NIRMAL CHATTERJEE (West Bengal): Mr. Dipen Ghosh is not here just now. The Finance Minister

[Shri Nirmal Chatterjee]

has called him. So he will be speaking later. (Interruptions)

THE VICE-CHAIRMAN [DR. (SHRIMATI) SAROJINI MAHISHI]: Shri Babul Reddy.

SHRI P. BABUL REDDY (Andhra Pradesh): Madam Vice-Chairman, I whole-heartedly support this Bill. There cannot be two opinions about the approach to this Bill. But one thing I am wondering about is why in instalments these amendments are coming. In the year 1983, 50 Acts have been amended to the same extent. In 1984, as the hon. Minister just now said, 69 Acts were amended. Today in the Schedule we have got 92 Acts. If there is any one good reason why by instalments we are coming, I would be happy to know. It is a formal amendment to give effect to the suggestions and recommendations made by the Committee on Subordinate Legislation. For that, this need not be so; they can take all the Acts, scrutinize them and see that if in any of these Acts this new formula is not present they can come up with a big list. Instead of taking the time of the House now and then, they could come out with one comprehensive list, and that could be in one schedule and it could have been done very elegantly. But this was not done. Madam, this delegated legislation in the form of rules and notifications is coming in great spate and emerging in large volumes. Even trained people in the professions, whether advoactes, auditors, accountants and other professional people also in their respective subjects are finding it very difficult to keep track of this growing mass of delegated legislation. It is a very ancient presumption, what is published in the Gazette is supposed to have been published. In the ancient days when the Gazette was published, there were no newspapers. So the only form of publication was the Gazette. But, unfortunately, this is still continuing. But only in the case of a few enactments—for example, in the Municipal Building Laws, there is a provision that besides publishing in the Gazette they should be published also in two newspapers having circulation in the area. Particularly in matters where citizens are adversely affected by any taxation or by any other provision, such a thing should be necessary. They should give publicity that such a thing is going to happen. That is why in some enactments there is what is called pre-publiaction of proposed rules and notifications. For example, under the Motor Vehicles Act there is a provision that any rule, before it can become a rule, must be published and objections should be invited. After hearing the objections, the rules can be in the original form. Then only it becomes law. So this pre-publication is very necessary, because merely laying on the floor of Parliament—it is necessary; I am not saying that it is not necessary—will serve very little purpose. How many Members have gone through the same. At the end of every Session or in between the session we get a pile containing all the papers laid down on the Table of the House in the form of rules or notifications or schemes. Very few people can go through them. They are very big volumes coming out with a proposal to amend a rule. It is laid on the Parliament for 30 days. Normally, it is not seen. At least in the last four years we have not seen anything like bringing a resolution for the disapproval of a rule or modifying a rule.

There is another provision in the present amendment which requires serious conisderation Supposing some resolution is brought forward when it is placed on the floor floor of the Parliament for 30 days, nothing happens unless both the Houses agree. Some Section Officer and then some Secretary and then the Minister approve it and it becomes a delegated legislation. Whosever does it, he is on the executive side. Suppose a particular rule is bad and requires amendment. Now suppose the entire Rajya Sabha passes a re-

solution unanimously saying that it is bad. But if the Lok Sabha does not pass it, the executive decision stands in spite of the fact that the Rajya Sabha has passed it unanimously or the Lok Sabha has passed it unanimously. So, some serious thought should be given to the situation. It could lead to a very anomalous position. The Lok Sabha saying that it is bad and the Rajya Sabha not agreeing to it and then the executive decision of delegated legislation would remain in force. I may not be able to suggest an alternative. But this is a serious situation which requires consideration. Otherwise, in spite of the disapproval of one House of Parliament, the delegated legislation would stand. That would be a bad precedent. The present amendment provides that unless both the Houses agree, the rules stand. After all, why does this delegated legislation come? When the Parliament passes a law, all possible situation may not be visualised. In order to meet the new situation, limited power is given to the executive to make rules and enforce them. These rules have the force of law. The Parliament should have a vigilant supervision over it and they should be placed here. We have to look into them and see whether they are good or not. In order to see that they serve the purpose, we have a Committee to go into that. Now, the delegated legislation cannot lay down policies because there cannot be any delegation of legislative policy. A policy can be laid down only by the Parliament or the Legislature. But its details can be worked out by delegated legislation. The present Bill gives the instances. The Representation of People Act of 1951 has a new section introduced in the Schedule. Originally, a rule was made. It was pointed out by the Subordinate Legislation Committee that the rule touches the policy or it exceeds the authority. So, it should be in the form of an amendment.

[**The Deputy Chairman** in the Chair].

Therefore, the Representation of People Act is sought to be amended by this very Bill in Item No. 31. The Subordination Legislation cannot lay a policy. They implement the policy and work out the details. Having regard to the object, I suggest that before these rules are made, there should be pre-publication particularly when it affects the people. For example, in the case of Minimum Wages Act, when a rule is sought to be revised, there should be pre-publication calling for objections. These should be heard and then finally the minimum wages should be fixed like that. There are many Acts like that. When the delegated legislation is likely to affect the citizen adversely, there should be pre-publication. This is my humble suggestion.

श्री कैलाश पति मिश्र (बिहार): उपसभापति महोदया, इस विधेयक का समर्थन ही करना चाहिए। लेकिन ऐसा लगता है कि पूरे सांगोपांग के साथ यह विधेयक नहीं प्रस्तुत किया गया है। कई क्षेत्रों में इस विधेयक के विस्तार की आवश्यकता दिखाई दे रही है। हमें मालूम है कि बैंकों के कार्यकलापों के ऊपर पब्लिक एकाउन्ट्स कमेटी का भी अधिकार नहीं है। संसद् के अन्दर उस पर चर्चा होनी चाहिए। मैं एक उदाहरण देना चाहता हूं। कई साल पुरानी बात है। पटना के एक बैंक की घटना है। बैंक के पदाधिकारियों ने कर्ज लिया। कर्ज लेते समय जो सेक्योरिटी वहां पर दाखिल की, जिस सेक्योरिटी के विरुद्ध कर्ज मिला उसका कहीं पता नहीं था। वहीं पर मार्केट का पता था तो वहीं पर प्लेटफार्म का पता था। उसके बाद यह बात खुली और आज तक सुप्रीम कोर्ट में मामला चल रहा है। इसलिए आज आवश्यकता इस बात की है, कि बैंकों के कार्यकलाप के ऊपर संसद् का अधिकार होना चाहिए, संसद् को बैंकों की छानबीन करने का अधिकार होना चाहिए। बैंकों को संसद् के प्रति एकाउन्टेबल होना चाहिए।

जैसा मैंने शुरू में कहा, इस विधेयक का विस्तार होना चाहिए। अभी हमारे रेड्डी साहब ने कहा कि आज नहीं तो कल, इसका विस्तार करना पड़ेगा फिर से

[श्री कैलाश पति मिश्र]

विधेयक लाना पड़ेगा । विधेयक के अन्दर जो भाषा रह गई है वह भी संपूर्ण रूप से नहीं रखी गई है। इस विधेयक को अधिक विश्लेषण और विस्तार के साथ लेना पड़ेगा इसके उद्देश्यों और कारणों के कथन को मैं पढ़ना चाहता हूं । किस प्रकार से कल्पना की जाती है यह उसका एक उदाहरण है। इसमें कहा गया है कि अधीनस्थ विधान संबंधी समिति (सातवीं लोक सभा) ने यह सिफारिश की है कि वह उपबंध जो इस समय निर्वाचनों का संचालन नियम, 1961 के नियम 39 के उपनियम (8) में अन्तर्विष्ट है, अधिनियम में ही सम्मिलित कर लिया जाय । उस उपनियम में यह उपबन्ध है कि यदि कोई निर्वाचक, उस नियम में विहित प्रक्रिया को अपनाने से इंकार करता है तो उसे दिया गया मतपत्र रद्द किया जा सकेगा । शायद सरकार भी यह स्वीकार करने के लिए तैयार नहीं है कि आज भी लोग दूसरे के नाम से वोट देकर चले जाते हैं। आराम से दूसरे के नाम से वोट देते हैं। 10 वर्ष का बालक 85 वर्ष के मतदाता का वोट देकर चला जाता है । इसको रोकने का सामर्थ्य न तो चुनाव आयोग में है और न सरकार इसको रोक पाई है। यद्यपि इस प्रकार के उपबन्ध जोड़ने से भाषा अच्छी लगती है, लेकिन व्यवहार में कुछ और ही होता है। मैं इस विधेयक का विरोध नहीं कर रहा हूं। लेकिन मुझे लगता है कि पूरे रूप में इस विधेयक पर विचार नहीं किया गया है । इसलिए मैं इस विधेयक के बारे में अधिक न कहते हुए और इसका समर्थन करते हुए यह कहना चाहता हूं कि बैंकों के सारे कार्यकलाप संसद् के अन्तर्गत आने चाहिए । संसद् के अन्तर्गत सारे बैंकों को लिया जाय, पब्लिक सेक्टर को लिया जाय और सब स्थनों पर संसद् का स्थान सर्वोपरि बने, ऐसा के प्रयत्न करना चाहिए । इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूं ।

SHRI S. W. DHABE (Maharashtra): Madam Deputy Chairman, this is a Bill brought on the recommendations of the Subordinate Legislation Committee. The Committee has recommended that every rule must be brought before Parliament and various provisions should be amended. So, this is a Bill which has got 92 Acts for the purpose of implementing the recommendations of the Committee on Subordinate Legislation. One or two valid points have been raised by my friend and I support them. The difficulty is that under this rule if one House agrees and the other House does not agree, what happens? We have a provision for only Bills under the Constitution, namely, that if one House agrees and the other House does not, then there may be a joint session where this matter can be considered. This situation arose in the case of the Banking Service Commission and on some other occasions. Therefore, this new situation which has been pointed out should be considered by the Law Minister and he should find out a solution for it as to what should be done in the case of disagreement between the two Houses. In that case either the rule has to be modified or it has to be annulled. Now in this thing the provision has been made for modification and annulment. Otherwise, if it is not modified by both the Houses then the original rule stands, the original provision stands. This will not be a proper thing.

Then, secondly, pre-publication is very important.

Now we are having these things published in the Gazette. But these must also be published in the newspapers so that they have a wide circulation and the people know what is going to be the law or the rule. One small point I want to bring to the notice of the Minister about implementing the recommendation of the Committee on Subordinate Legislation. This is about Entry 31. The Representation of the People Act, 1951, where a section has been added, namely, section 132A. It is not a question of framing the rules, Rule 132A has fixed up a new provision in the Representation of the People Act. In my opinion that cannot form a part of this type of legislation which is called delegated legislation. It should have been separately brought in at the time of amending the Representation of the People Act, 1951 and it cannot be a part of the present legislation.

With these words, Madam, I support the legislation.

SHRI H. R. BHARDWAJ: Madam Deputy Chairman, as I pointed out, when I initiated the debate, this is a matter which was recommended by the Committee on Subordinate Legislation. They had pointed out the necessity and nobody can deny that the recommendations had to be implemented

Now, there is a question that my learned friend, Mr. Babul Reddy has raised, why it has been brought in piecemeal? I want to submit that this is because the administrative Ministries had to be consulted and they have to clear these amendments and then only we can bring them here. We have already gone through this exercise and we know which are the Bills which need such type of amendments. We are having a list of 115 such Bills. But the question is that we have to refer them to the Ministries concerned, the administrative Ministries, seeking their concurrence. Then the Legislative Department will undertake an exercise similar to the one in hand. So, you will appreciate that in 1984, 69 Acts were covered. We have added 25 more in that. We have added. We are not going backwards. We are proceeding forward. The remaining Bills we have referred to the administrative Ministries seeking their concurrence. There are two ways, either we do not proceed with what we have in hand, or we wait till other Bills are cleared. You will appreciate that when the number of Acts are sizable, 115 or so, or even more, then it will take a long time, so far as we are concerned.

SHRI NIRMAL CHATTERJEE: There is a third alternative also. You can ask the Ministries to give their concurrence in time.

SHRI H. R. BHARDWAJ: I will do my job. You need not ask me to do somebody else's job. At the moment, I have got 92 Bills with me. I have brought in this Amendment Bill and the House has been very kind to agree to this proposal. I can assure you that speed will always be there. If I get another 50 or 60 Bills, or more, I will again bring them. I want to implement the directions of the Subordinate Legislation 5.00 P.M Committee that there should be no Bill whose rules are not laid before the House, because the anxiety is to lay them before the House. So far as this is concerned, you can take it that we should not with hold these amendments and should rather lay them before the House. So, it is in that direction that this step is taken.

Regarding the publication, I quite see the point in the suggestion that the public must know what is the effect on a subordinate legislation. I personally see as a lawyer that we must have everything in the Act primarily; but you will appreciate that this is a system which we have accepted—the subordinate legislation—and maximum publicity should be given Today I think we have got a

[Shri H R. Bhardwaj]

sound network and the press the media, all that, and people are aware that some fundamental rules are there. We will consider this and give this for consideration of the administrative Ministries also.

There is another point which was made by Mishraji about enclosing of sub-rule 8 of rule 39 for Conduct of Elections Rules 1961. This now is sought to be incorporated in the Representation of People Act itself. This is also what the Committee itself felt that this must be done; because it is a recommendation of the Committee, I cannot withhold it to bring it with other amendments in the elections law. This could be part of the other amendments also. .

SHRI S. W. DHABE: It is not a delegated legislation.

SHRI H. R. BHARDWAJ: Earlier this was to be done by the Conduct of Election Rules, and the rules are subordinate legislation. Therefore, they said that instead of having the rules, you affect the right of the citizen in voting; so it must not be in the subordinate legislation; it should be in the Act. So, we are implementing it. I think a lawyer can understand it better than any other Member because subordinate legislation should not snatch away the right of a citizen. So it is something very fundamental and so it is in the Act itself. That is why we are incorporating it swiftly. It may take 2-3 months for the electoral reforms; I do not want to take any time and I am putting it straightaway. So, I don't think there should be any criticism for its implementation.

So, I request that the House may be kind to agree to all these amendments in the various Acts and I can assure you that with regard to remaining part, I will proceed post haste.

THE DEPUTY CHAIRMAN: The question is:

"That the Bill to amend certain Acts to implement the recommendations of the Committees on Subordinate Legislation regarding publication and laying of rules and other delegated legislation and certain other matters, be taken into consideration."

The question was put and the motion was adopted.

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2 and the Schedule were added to the Bill.

Clause 1 the Enacting Formula and the Title were added to the Bill.

SHRI H. R. BHARDWAJ: I move:

"That the Bill be passed."

The question was put and the motion was adopted.

MESSAGE FROM THE LOK SABHA

The Pondicherry University Bill, 1985

SECRETARY-GENERAL: I have to report to the House the following message received from the Lok Sabha signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 28th August, 1985, agreed without any amendment to the Pondicherry University Bill, 1985, which was passed by Rajya Sabha at its sitting held on the 30th July, 1985."